IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

OP.No. 3325 of 2003(U)

PETITIONER:

M.RADHAKRISHNAN UNNITHAN,
AGED 47 YEARS S/O. MADHAVAN UNNITHAN, HEAD MASTER,
AIDED MAPPILA UPPER PRIMARY SCHOOL,
KUMINIPARAMBA, MALAPPURAM DISTRICT, RESIDING AT
' RAVI VILASOM', ANDIYOOR KUNNU (POST) 673 637
KOCHIKATHIPARAMBA, MALAPPURAM DISTRICT

BY ADV. SRI.P.V.MOHANAN
SRI.B.HARISH KUMAR

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
SECRETARY, GENERAL EDUCATION (B) DEPARTMENT,
THIRUVANANTHAPURAM

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM

3. DEPUTY DIRECTOR OF EDUCATION,
MALAPPURAM

4. ASSISTANT EDUCATIONAL OFFICER, KONDOTTY

BY GOVERNMENT PLEADER, SRI.T.T.MUHAMOOD

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 3325/2003(U)

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE ORDER NO.G.O.(P) 127/99/G.EDN. DATED 04.05.1999 ISSUED BY THE 1ST RESPONDENT.

EXT. P2: COPY OF THE PROCEEDING NO.D4477/99 ISSUED BY THE 4TH RESPONDENT.

EXT. P3: COPY OF THE REPRESENTATION DATED 29.11.99 FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.

EXT. P4: COPY OF THE APPEAL PETITION FILED BY THE PETITIONER DATED 23.6.2000 BEFORE THE 3RD RESPONDENT.

EXT. P5: COPY OF THE LETTER NO.F4/32217/2000 DT. 30.9.2000 ISSUED BY THE 3RD RESPONDENT.

EXT. P6: COPY OF THE ORDER NO./L.DIS/4100/02/R3/DPI/DATED 17.4.2002 ISSUED BY THE 2ND RESPONDENT.

EXT. P7: COPY OF REVISION PETITION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 5.9.2002.

EXT. P8: COPY OF PROCEEDING DATED 17.12.2002 ISSUED BY THE 1ST RESPONDENT.

EXT. P9: COPY OF THE GO(MS) 63/89 G.EDN DATED 8.6.1989.

EXT. P10: COPY OF THE ORDER NO.K.DIS,C-2369/05 DATED 20.3.2005.

EXT. P11: COPY OF THE B3-21752/2005 A.T. DATED 5.4.2006.

EXT. P12: COPY OF THE JUDGMENT IN O.P. NO.24851/1999 DATED 23.1.2003.

EXT. P13: COPY OF THE GO(P) NO.138/2005 DATED 4.5.2005.

/TRUE COPY/

P.A. TO JUDGE

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S.SIRI JAGAN, J.

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O.P. No. 3325 of 2003 (U)

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Dated this the 12th day of November, 2007

JUDGMENT

The petitioner is a Headmaster in a UP School. He is challenging Exts.P2, P5, P6 and P8 orders wherein the petitioner's claim for Scale of Pay of Headmaster with effect from 11.10.84 was rejected.

2. The petitioner started service as UP School Assistant with effect from 8.12.1980. The post of Headmaster of the School fell vacant on 11.10.84. The petitioner was appointed on 11.10.84 as Headmaster on probation as there were no other qualified hands in the School eligible for promotion as Headmaster. The petitioner completed 5 years of service as a Graduate Teacher and he was appointed as Graduate Headmaster on 8.1.86. Scale of pay was sanctioned, which was later objected to on the ground that the petitioner had not completed 15 years of service and the excess amount paid as salary was refunded.

By order dated 1.12.89 the petitioner was reverted as teacher-in-charge with effect from 8.5.87 for want of test qualification. The same was also endorsed in his service book. There was an order granting exemption from test qualification which was in force in 1988. That exemption was annulled by a Division Bench of this Court in **Pankajakshi and ors. v. George** (1987 (2) KLT Page 723). The appeal filed by the Headmaster before the Supreme Court was dismissed with the following observation.

> *"We, however direct the State Government not to revert those Headmasters who have not passed the Account Examination yet and who are now holding the post of Headmaster only they get one more chance to appear at the Accounts Examination to be held by the Kerala Administration."*

3. Subsequently by Order dated 8.5.87 the Government directed that all teachers promoted as Headmasters be reverted. However the petitioner was not reverted. In May 1989, the petitioner passed account test. Subsequently, he was promoted as Graduate Headmaster on 1.1.90, which was approved. He completed 15 years of service on 1.6.96 and he was granted scale of pay of Headmaster from 1.6.96. The petitioner

thereafter claimed scale of pay of Headmaster with effect from 11.10.84, on which date the petitioner was earlier promoted as Headmaster. This was rejected by Ext. P2 order holding that the benefit is available only to those Headmasters who were still holding the post of Headmaster prior to 15.9.1988. Petitioner's appeal was rejected by Ext. P5 as well as Exts. P6 and P8. It is in the above circumstances, that petitioner has approached this Court, seeking the following reliefs:

> "i) To call for the records leading to Exhibits P-2, P-5, P-6 and P-8 and set aside the same by issuing a Writ of Certiorari or other appropriate writ.
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> ii) To declare that the petitioner is entitled to get the scale of pay attached to the post of Headmaster of the Primary School fixed with effect from 11.10.1984."

3. I heard the learned Govt. Pleader also. Now it is not disputed before me that the petitioner would be entitled to claim Headmaster's scale of pay with effect from 11.10.84, only if the petitioner was validly holding the post of Headmaster immediately prior to 15.9.88. Admittedly by order dated 1.12.89 the petitioner was reverted as teacher-in-charge with effect from

8.5.87. Therefore, the petitioner ceased to be a Headmaster from 8.5.87 onwards. That being so, the petitioner would not be entitled to claim headmaster's scale of pay on the ground that the petitioner was holding the post of headmaster immediately prior to 15.9.88 and in accordance with the Supreme Court Judgment he had passed the account test. The petitioner relies on certain Govt. Orders in respect of similarly placed Headmasters. But I find that in all those cases those Headmasters had successfully challenged their reversion as teacher-in-charge, which the petitioner did not. The petitioner contends that he had passed account test and was subsequently promoted as Headmaster with effect from 1.9.96 and therefore it was not necessary for the petitioner to challenge the earlier order of reversion. I do not agree. If the petitioner wants to get the benefits on the ground that petitioner was continuing as a Headmaster immediately prior to 15.9.88 the petitioner should show that he had successfully challenged the order dated 1.12.89, by which he was reverted as teacher-in-charge with effect from 8.5.87. Admittedly petitioner did not challenge that order at all. Therefore, his prior service as Headmaster based

on the promotion on 11.10.84 becomes obliterated and he ceases to derive any benefits therefrom.

4. Of course the petitioner would try to contend that in view of the explanation to Rule 49 of Chapter XIV A of KER the word "Headmaster" includes teacher-in-charge and therefore even teacher-in-charge is entitled to the benefit available to headmaster. This also I am unable to countenance. Rule 49 specifically says that the word 'Headmaster' includes teacher-in-charge also for the purpose of that rule. That would necessarily mean that for other purposes the word "Headmaster" cannot include teacher-in-charge unless the same is so expressly made clear in the other rules. In the absence of any provision in the KER to the effect that for the present purpose the term Headmaster would include teacher-in-charge, the petitioner who is only a teacher-in-charge cannot claim the benefit applicable to a headmaster.

5. The result of the above discussion is that the order dated 1.12.89 reverting the petitioner as teacher-in-charge with

effect from 8.5.87 stands and hence, the petitioner loses his right to claim Headmaster's scale of pay on the basis of his earlier promotion as Headmaster. In the above circumstances, the writ petition is without merit and the same is dismissed.

Sd/-
S.SIRI JAGAN,
JUDGE

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